

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | |
|-------------------------------------|---|-------------------|
| CAROL LEWIS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No.: |
| |) | 1:15-CV-13530-NMG |
| |) | |
| ALEX AZAR |) | |
| Secretary, United States Department |) | |
| of Health and Human Services, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

SECRETARY’S REPLY TO PLAINTIFF’S MOTION TO ALTER EAJA AWARD

On March 30, 2019, this Court issued a Memorandum & Order awarding Plaintiff \$49,477 in EAJA costs and fees. The Court calculated this amount “based on the COLA award (\$101,096) less the reduction calculated by the Court (\$52,245) plus the bill of costs (\$626).” Memorandum & Order (“Mem. & Order”) at 12. The Court awarded \$52,245 less than Plaintiff had requested for two reasons. First, the Court held that Plaintiff’s counsel were not entitled to “special factor” enhancement of fees. *Id.* at 9. Second, the Court held that fees for 258 hours were inappropriately requested because they were unrelated to this action; that is, Plaintiff had had improperly requested fees for a local coverage determination challenge (“LCD”) that she made that was vacated by the appellate court because “plaintiff was not the prevailing party with respect to the LCD challenge and she did not appeal that decision to this court.” *Id.* at 11. The Court awarded EAJA fees to Plaintiff based on a per hour COLA fee of \$202.50. The per hour COLA fee adopted is the COLA fee requested by Plaintiff. *Id.* at 9.

The Plaintiff’s Motion to Correct EAJA Award takes the position that the Court made a “mathematical error” by calculating the “LCD fee/cost number” at the “standard billing rates, not

the COLA rates.” Pl. Mot. to Correct EAJA Award at 1. Plaintiff argues that “[a]djusting the LCD fees using the COLA rates approved by the Court results in COLA LCD fees/costs of \$29,098[,]” rather than \$52,245. *Id.* Plaintiff’s argument is contradicted by the plain language of the Memorandum & Order. The Memorandum & Order states that the awarded fees will be reduced for the LCD litigation by deducting 258 hours¹ at the COLA rate of \$202.50. Mem. & Order at 11. This computes to \$52,245, the amount that the Court deducted here. *Id.* It is unclear why Plaintiff has concluded that a mathematical error exists as the Court expressly calculated its reduction using the appropriate COLA rate. The Secretary requests that the Court decline Plaintiff’s request for an increased award.

Respectfully submitted,

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/s/ Anita Johnson

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¹ The Secretary’s Sur-Reply clearly sets forth its rationale for concluding that Plaintiff had requested 258 hours in EAJA fees related to the LCD litigation. Sec’y Sur-Reply at 6; Def. Ex. A; Pl. Mot. for Fees & Costs. The Secretary’s Sur-Reply also notes that Plaintiff had requested approximately \$101,809.60 as compensation for the 258 hours. *Id.* This Court reduced this amount in its Memorandum & Order to reflect the COLA rate without the special factor enhancement, consistent with its decision. Mem. & Order at 11.

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Certificate of Service

I hereby certify that the foregoing will be filed through the electronic filing system of the Court, which system will serve counsel for Plaintiff electronically, on this 29th day of April 2019.

/s/ Anita Johnson

Assistant U.S. Attorney